In the High Court of Punjab and Haryana at Chandigarh.

1. Regular Second Appeal No.1876 of 1984.

Date of decision:21.11.07.

Dhian Singh.

...Appellant.

Versus

Sheela Devi and others.

...Respondents.

...

2. Regular Second Appeal No.3498 of 1985

Date of decision :21-11-07

S. K. Narad.

...Appellant.

Versus

Dhanpat Singh and others.

...Respondents.

...

3. Regular Second Appeal No.18 of 1986.

Date of decision:21-11-2007

Gurbux Singh and another.

...Appellants.

Versus

Dhanpat Singhand others.

...Respondents.

...

Coram: Hon'ble Mr. Justice K. C. Puri.

...

Present: Mr. G.S.Jaswal Advocate for appellant in RSA Nos.1876 of 1984 and 18 of 1986.

Mr.P.K.Gupta Advocate for the appellant in RSA No.3498 of 1985.

Respondents ex parte.

...

K. C. Puri, J.

Judgment.

Vide this judgment, I intend to dispose of RSA Nos.1876 of 1984, 3498 of 1985 and 18 of 1986, titled above. However, facts are being extracted from RSA No.3498 of 1985.

The brief facts of the case are that one Dhanpat Singh, plaintiff filed a suit for a declaration for declaring sale deeds dated 13.3.1981 and 26.5.1981 as illegal, void and ineffective against the rights of the plaintiff and in the alternative he sought possession of the suit land. It is pleaded that the plaintiff is the owner in possession of land measuring 3 kanals 6 Marlas comprised in Khasra No.717 situated in the area of village Premgarh and land measuring 6 Kanals 9Marlas bearing Khasra No.5122/2138situated in the area of Sutehri. The plaintiff and defendant Nos.3 to 17 were joint owners in possession of land measuring 24 Kanals 2 Marlas situated in village Sutehri and land measuring 18 Kanals situated at village Premgarh as detailed fully in the plaint. They orally partitioned the joint land on the basis of Kuras prepared by Mul Raj, retired Kanungo. A joint application was filed before the Tehsildar, Hoshiarpur for giving effect to the oral

partition in the revenue record. Mutation with respect to the land at village Premgarh was sanctioned on the basis of partition while that relating to village Sutehri was entered but was not decided by the Revenue Officer. By an inadvertent mistake on the part of the Revenue Officer, mutation regarding land measuring 3 Kanals 6 Marlas bearing Khasra No.717 situated at village Premgarh was not sanctioned in the name of the plaintiff though it fell to his share. Taking advantage of non-implementation of the partition in the revenue records and wrong entries showing Ishar Kaur as owner to the extent of ½ share, the impugned sale deeds were made. It is further pleaded that the plaintiff has made an application to the Sub Registrar intimating him that defendant Ishar Kaur had no right to sell the land in view of partition.

Only defendants S.K.Nard, Ishar Kaur, Gurbux Singh and Kirpal Kaur, defendant Nos.1,3,18 and 19 contested the suit.

Defendant Nos.1and 3 took some preliminary objections in their joint written statement. They further pleaded that the plaintiff was not in possession of the suit property, so they were not entitled to the declaration. In view of other suit between Gian Singh and Ishar Kaur,the instant suit was liable to be stayed and that the suit was collusive with defendant Nos.4 to 17. On merits, they admitted that the plaintiff and defendant Nos.3 to 17 were joint owners of the land situated at villages Sutehri and Premgarh and further there was partition regarding land, except Khasra No.717 situated at village Premgarh as per Kuras prepared by Mul Raj, retired Kanungo. The same was accepted by the parties and mutation was duly sanctioned and entered in the revenue record. As regards land

situated at village Sutehri, it was pleaded that the partition proposed by Mul Raj was not accepted by the plaintiff and defendant Nos.4 to 17.As per proposed partition, the land comprised in Khasra No.897situated in village Sutehri was to fall to the share of Ishar Kaur,defendant but the plaintiff and his brothers did not agree to it and remained in possession as joint owners. They also inducted Mehnga Singh as their tenant at the rate of rent of Rs.800/- per year. They filed an application for ejectment of Mehnga Singh. It is further pleaded that defendant No.3 was a co-sharer to the extent of ½ share of the land situated at village Sutehri and Khasra No.717 situated at village Premgarh and she had sold the same to defendant No.1 for a valuable consideration.

Defendant Nos.18 and 19 also filed a joint written statement contesting the claim of the plaintiff. They pleaded that there was no partition of the land at village Sutehri and if there was any such partition, it was never acted upon. Defendant No.3 has sold his share in Khasra No.5170/2138 and not specific piece of land. These defendants claimed themselves to be in possession.

On the pleadings of the parties,eight issues were framed.

After the conclusion of trial and hearing counsel for the parties, Shri M.L.Malhotra, PCS, Sub Judge Ist Class, Hoshiarpur vide judgment dated 22.1.1984 declared the plaintiff to be the owner of the suit land. Since he was not proved to be in possession, the relief of possession was also granted.

Feeling dis-satisfied with the above-said judgment, three appeals were preferred. Shri R.L.Anand, the then Additional District Judge,

Hoshiarpur dismissed the above-said three appeals vide judgment dated 7.10.1985.

Still feeling dis-satisfied with the judgment passed by Shri R.L. Anand dated 7.101975, the defendants have preferred the above-said three appeals. Since all these appeals have arisen out of the same judgment, as such the same are being disposed of with this common judgment.

The appellant has moved an application under Order 41Rule 27 CPC for producing the following documents:-

Annexure P-1 Parat Sarkar in respect of mutation No.5686.

Annexure P2 Copy of Jamabandi for the year 1971-72.

Annexure P3 Copy of Jamabandi for the year 1976-77.

Annexure P4 Copy of Jamabandi for the year 1981-82.

Annexure P5 Copy of Jamabandi for the year 2001-02.

So far as Annexure P1 is concerned, that is a copy of mutation of Parat Sarkar and the plaintiff has himself relied upon the copy of that mutation of Parat Sarkar Exhibit P28. Documents Annexures P2 to P5 are the copies of Jamabandies. These documents cannot be forged and there is no one to oppose the prayer of the appellants. So, these documents are admitted by way of additional evidence as Exhibit AX/1 to AX/5.

The learned counsel for the appellant has vehemently submitted that the land of original co-sharers was joint in villages Sutehri and Premgarh. The land of village Sutehri has been partitioned and mutation, in this regard, has been sanctioned. So far as the land situated in village Premgarh, which is the subject matter of the present suit is concerned, mutation regarding the same was entered but the same has been declined

vide mutation, Exhibit P28. The learned counsel for the appellant has relied upon said mutation Exhibit P28 but the reason of dismissing the mutation has not been mentioned in Exhibit P28 and on that count, Annexure AX/1 has been produced. It is mentioned on Annexure AX/1 that mutation has been presented in general meeting but since the possession has not been changed, hence the mutation has been rejected by A.C. IInd Grade. So, this document suggests that the plaintiff was not in possession of the land in dispute. So, no partition has taken place in respect of the suit land. Even if it is assumed that partition has taken place, in that case also, the rights of the appellants are protected under Section 41of the Transfer of Property Act as they are bona fide purchasers for valuable consideration without any notice. It is submitted that no doubt finding of fact cannot be challenged in second appeal, but the issue of bona fide purchaser has not been taken into account by Shri R.L.Anand, Additional District Judge, Hoshiarpur. So, that point would be deemed to have been not decided by the said Judge and as such the same cannot be taken as a finding of fact. No doubt, in his discussion, the learned Additional District Judge has taken into consideration the plea of bona fide purchaser but that is not sufficient as additional issue of bona fide purchaser has not been decided by the Additional District Judge.

It is further submitted that the defendants/appellants have taken a specific objection in the written statement taking the plea of bona fide purchasers but the plaintiff has not filed any replication controverting the plea of bona fide purchasers and as such the plea of bona fide purchasers would be deemed to have been admitted by the plaintiff.

It is further submitted that the appellants have taken possession

of the suit property from the vendor. The appellants have raised boundary wall around the suit property. In the revenue record, the vendor has been shown as owner. The appellants have purchased the property after going through the revenue record. They have made payment of full consideration to the vendor. So, in these circumstances, the rights of the appellants are protected under Sections 41of the Transfer of Property Act being bona fide purchasers for value without notice of any defect in title of vendors.

It is further submitted that mutation of alleged partition was entered in the year 1973 and the same was rejected in the year 1975. The plaintiff has not challenged the rejection order and alleged revenue record remained in the name of the appellants. So, in these circumstances, the rights of the appellants are protected under Section 41. Both the Courts have also not properly appreciated the evidence regarding the plea of bona fide purchasers and as such the High Court can interfere in the second appeal, in view of the authorities detailed in succeeding paragraphs.

It is further submitted that from the perusal of Exhibits P1 to P6, it is evidence that it is recorded that the value of the property is more than Rs.73,000/-. The plaintiff is relying upon Exhibits P1 to P6. These documents are inadmissible in evidence being un-registered.

It is further submitted that the appellants have placed on file Jamabandies from the years 1971-72 to 2000-2001.Prior to the purchase of the suit property by the appellants, their vendor has been shown to be owner in possession. After the execution of the impugned sale deed, the appellants have been shown owner in possession of the suit property. So, in these circumstances, the plaintiff has no legal right to challenge sale deeds in

favour of the appellants. Exhibits P1 to P6 are alleged to be signed by the plaintiff alone and Pandit Mul Raj, retired Kanungo who is stated to have prepared these documents. The other co-sharers have not signed Exhibits P1 to P6. On that count, it cannot be said that there is any legal partition.

It is further submitted that the statement of Mul Raj Kanungo demolishes the case of the plaintiff itself as he has stated that Ishar Kaur never met him and there are number of additions and alterations in Exhibits P1and P6. So, this kind of documents cannot be relied upon. The learned counsel for the appellants has relied upon the following authorities:-

1. **Sukha Singh Versus Jasvinder Singh**
   2001(3) Latest Judicial Reports 798 (P&H).

2. **Anup Singh Versus Smt.Bachni alias Bachan Kaur.**
   1997(1) Recent Civil Reports 26 (P&H).

3. **Avtar Singh Versus Hazura Singh and others.**
   AIR 1984 211 (P&H).

4. **Neelakanth and another v.Siddalingayya and others**
   AIR 2004 Karnataka 258.

5. **Kundan Singh and others Vs. Sohail Singh and others**
   1983 CLJ (C& Cr) 442 (P&H).

6. **M. Venkataramana Hebbar (D) By Lrs. Versus M. Rajagopal Hebbar & Ors.,** 2007(2) RCR (Civil) 404 (SC).

7. **Suba Singh Versus Mohinder Singh and others (**Vo.LXXXV-1983) The Punjab Law Reporter 612 (P&H).

8. **Madhukar and others Versus Sangram and others** 2001(1) Apex Court Journal 398 (S.C) 398.

9. **Shiv Sarup Gupta v. Dr. Mahesh Chand Gupta,** JT 1999(5) 201.

10. **Ram Narain Arora V. Asha Rani and others**, JT 1998 (6) SC 181.

The appellants in all the three Regular Second Appeals have not formulated the questions of law and on the asking of the Court in view of authority in **Kulwant Kaur Versus Gurdial Singh,** reported in AIR 2001Supreme Court 1273, they have formulated the questions of law in all the three appeals.

The following questions of law formulated in Regular Second Appeal No.3498 of 1985;-

1. Whether Exhibit P28 Parat Patwar without production of Parat Sarkar carry any legal value to show the reasons for rejection of the mutation?

2. Whether the learned lower Appellate Court was duty bound being Court of law to decide all the issues?

3. Whether Mul Raj was competent to execute the documents without thumb impression of Ishar Kaur?

4. Whether the alleged family partition which has not been incorporated in the revenue record till date carry any value in the eyes of law and on the basis of the same, can it be said that property has been partitioned and as such the findings recorded by the Court below being based upon wrong approach of law is null and void and is worth to set aside?

5. Whether the judgment of the trial Judge who dismissed the arguments of the appellant regarding bona fide purchaser for value and consideration on the ground that there is no plea raised in the trial court carry any value?

6. Whether the defendant No.1 is bona fide purchaser for

valuable consideration and without notice is protected under Section 41of the Transfer of Property Act ?OPD.

7. Whether the judgment in hand under challenge is result of misreading and mis-appreciation of the evidence in question? What is the incorporation of revenue record in which Ishar Kaur is shown to be joint owner with other co-sharers and what is the effect of the same?

8. Whether the revenue record produced on the record of the case for decision of the appeal by learned Appellate Court as well as trial Court in which Ishar Kaur is shown to be joint owner and after her transfer, the appellant is shown to be joint owner of the property, has been rightly incorporated or what is the interpretation of the revenue record showing the property to be joint ownership?

The appellants in Regular Second Appeal Nos. 1876 of 1984 and 18 of 1986 formulated the following questions of law:

1. Whether separate Kurras prepared in writing valuing more than Rs.100/- require registration under Section 17 of the Registration Act

2. What is the effect of the document which require registration, has not been registered and rejected by the revenue authorities by refusing to sanction mutation, particularly when according to said instrument of partition, possession was not delivered?

3. Whether the rejection of mutation is not sufficient to

dislodge the claim for private partition and the subsequent purchaser is not entitled to protection of Section 41of the Transfer of Property Act?

I have given my thoughtful considerations to the submissions made by the counsels for the appellants and have carefully gone through the record.

It is settled law that question of fact cannot be challenged in the Regular Second Appeal, in view of Section 100 C.P.C. So far as the contention of learned counsel for the appellants to the effect that since both the Courts below have not appreciated the facts properly and mis-interpreted the facts, on that count the factum of bona fide purchaser and private partition can be challenged in the Regular Second Appeal is concerned, the same looks attractive but is without any legal force. The learned counsel for the appellants could not draw my pointed out attention to any fact by which the learned the learned trial Court has mis-interpreted or not properly appreciated the facts. It is not disputed that the original co-sharers have land in two villages i.e.Sutehri and Premgarh. It is also not disputed that on the basis of documents Exhibits P1 to P6, the land of village Premgarh has been mutated in the names of co-sharers. The bone of contention in the present case has arisen due to the fact that mutation of private partition has been entered in respect of land of village Sutehri but the same has been rejected on the ground that possession has not been delivered. Once documents Exhibits P-1 to P-6 have been accepted to be correct in respect of land of village Sutehri, the co-sharers or their vendors are estopped by their act and conduct from challenging the fact that partition

has not taken place in respect of land situated in village Premgarh. The contention raised by the learned counsel for the appellants to the effect that Ishar Kaur has not signed Exhibits P1 to P6 is also without substance as from the documents Exhibits P7 to P17 it is crystal clear that all the co-sharers including Ishar Kaur have signed the memorandum of partition

The learned counsel for the appellants has further assailed the private partition on the ground that the same is un-registered. This submission of learned counsel for the appellants is without any substance. Once there is oral family settlement and thereafter the same is reduced into writing, in that case, memo of partition does not require registration. From the document Annexure AX/1, it is made out that the co-sharers have orally partitioned their land and thereafter the writings Exhibits P1 to P6 have been executed.

Learned counsel for the appellants has further submitted that Shri R.L.Anand,Additional District Judge, Hoshiarpur has not specifically decided the issue of a bona fide purchaser and on that count the plea of bona fide purchaser has not become the finding of fact. This argument does not cut any ice before me. From the bare reading of discussion in respect of issue Nos. 2 and 4-C, it is crystal clear that the plea of bona fide purchaser has been discussed in detail by Shri R.L.Anand, the then Additional District Judge, Hoshiarpur. Sh. Anand has very elaborately decided the issue of bona fide purchaser. So, above-said contentions are meritless.

The submission made by the learned counsel for the appellants to the effect that since in the Jamabandi, the names of vendors of the appellants were mentioned and appellants have paid the price without any

notice of any defect in the title of vendors and on that account they are protected under Section 41 of the Transfer of Property Act,cannot be accepted. That submission has also been discussed in detail by the Courts below. The basic law is “buyer beware”. If the buyers had made little more enquiry about the revenue record, in that case they must have come to know that private partition of suit land has been entered in revenue record and suit land had fallen to the share of plaintiff/respondent. Documents Exhibits AX/2 to AX/5 produced by the appellants by way of additional evidence only reflect the fact that previously vendors of the appellants have been recorded as co-sharers and after sale, the appellants have been shown as owners, but, this revenue record does not advance the case of the appellants in any manner. Had the mutation in respect of village Premgarh been accepted, in that case, the name of vendor of appellants would not have been mentioned in the revenue record.

So far as submission of learned counsel for the appellants to the effect that cross-examination of Mul Raj Kanungo demolishes the case of the plaintiffs is concerned, that submission does not deserve acceptance. Said witness is an impartial witness and he has no axe to grind against any of the appellants. He has executed the documents at the instance of co-sharers. No little finger has been raised against the said witness. So, in these circumstances, the criticism of this witness is ill founded. So, the submission made by the counsel for the appellants to the effect that since the appellants have taken possession of the suit property from the vendors and on that count, the suit is liable to be dismissed, is without any force. A person can sell his property of which he/she is the owner. The suit land has

fallen to the share of the plaintiff by way of partition. The vendors of the appellants were not the owners of the suit land and they have been allotted other land than the suit land. So, in these circumstances, since the vendors of the appellants were neither owners nor in possession of the suit land as such they could not convey any title in the suit property. The learned trial Court has rightly decreed the suit of the plaintiff.

So far as the submission made by the counsel for the appellants that mutation of village Premgarh has been rejected in the year 1975 and the same has not been challenged and that on that count, the plaintiff cannot challenge the mutation is concerned, that submission is without any substance. Mutation does not confer any title. Mutation is only for fiscal purposes to complete the record. So, the above-said contention of the learned counsel for the appellants has no force.

So far as the submission made by the learned counsel for the appellants to the effect that replication has not been filed is concerned, that submission is fallacious. From the perusal of order dated 25.1.1982 of the learned trial Court, it is revealed that it has been mentioned that the replication has been filed. So, the counsel for the appellants cannot derive any benefit from the above submission.

So far as authority **Sukha Singh** (supra) is concerned, the same is distinguishable as in that case, the plaintiff has become owner on the basis of decree but the decree has not been implemented in the revenue record. In the present case, mutation of family settlement has been entered in the revenue record.

Authorities reported as **Anup Singh, Avtar Singh** and

Neelakanth and another (supra) are also distinguishable as in those cases, mutation has not been entered and rejected.

In the authority reported as **Kundan Singh and others, Suba Singh and M.Venkataramana Hebbar (** (supra), it has been held that if family settlement does not partition the land by metes and bounds and is merely an arrangement for cultivation of land, in that case, no partition of land can be accepted. However, in the present case, from the perusal of Exhibits P1 to P6, it is revealed that all the co-sharers have been given equal value of land. The value of land and the khasra numbers have also been mentioned. Khasra numbers in dispute have been allotted to the plaintiff. The joint property has been partitioned by metes and bounds between the co-sharers. So, in these circumstances, the vendors of the plaintiff has no right to alienate the property in favour of the appellants and they have not been left with any right in the suit property.

In authority reported as **Madhukar and others** (supra), it has been held that in the first appeal, the parties have a right to be heard both on questions of law and facts. There is no dispute to this proposition of law. Both the Courts below including Shri R. L. Anand, Additional District Judge, Hoshiarpur have decided the questions of law and facts. So, the above-said authority is distinguishable.

Authority reported as **Shiv Sarup Gupta** relates to 115 C.P.C and is remotely connected to the facts of the present case.

Authority reported as **Ram Narain Arora** (supra) is also not applicable to the facts of the present case as the same relates to Delhi Rent Control Act, 1958. In that case, it has been held that High Court could

examine the facts available in order to find out whether the Rent Controller had correctly and on legal basis decided the case.

In view of the above discussion, the question of law formulated in all the three appeals, referred to above, stand answered against the appellants.

I find no fault in the appreciation of evidence made by the learned trial Court and in re-appraisal of evidence by the Additional District Judge, Hoshiarpur.

In view of the above discussion, all the three appeals are without any merit and are dismissed. However, in view of the fact that the respondents have not come present, there is no order as to costs.

November 21 ,2007. (K. C. Puri)
Jaggi Judge